Office of the Conflict of Interest and Ethics Commissioner

Commissariat aux conflits d'intérêts et à l'éthique

Carson Report

Discontinuance of an Examination

2018

June 2018

Mario Dion

Conflict of Interest and Ethics Commissioner

Carson Report – Discontinuance of an Examination
made under the *CONFLICT OF INTEREST ACT*

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PREFACE

The *Conflict of Interest Act*, S.C. 2006, c. 9, s. 2 (the Act) came into force on July 9, 2007.

An examination under the Act may be initiated at the request of a member of the Senate or House of Commons or on the initiative of the Conflict of Interest and Ethics Commissioner.

When an examination is initiated at the request of a Member of the House of Commons, the Commissioner is required under section 44 of the Act to examine the matter, unless he or she determines that the matter is frivolous or vexatious or is made in bad faith. The Commissioner may, having regard to all the circumstances of the case, discontinue the examination.

The Commissioner must provide a report to the Prime Minister setting out the facts in question as well as the Commissioner's analysis and conclusions in relation to the examination even where an examination is discontinued. A copy of the report must, at the same time, be provided to the member who made the request and to the current or former public office holder who is the subject of the request, and must also be made available to the public.

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EXECUTIVE SUMMARY

This report signals my discontinuance of an examination under the *Conflict of Interest Act* of the conduct of Mr. Bruce Carson, a former senior advisor in the Prime Minister's Office.

It had been alleged that Mr. Carson contravened section 33 of the Act by trying to use his influence to have federal funding approved for the purchase of water filtration systems on indigenous reserves, so his then girlfriend could earn lucrative commissions on their sale. Section 33 prohibits former public office holders from acting in such a manner as to take improper advantage of their previous public office.

The examination was launched by my predecessor in April 2011. In November of that year, it was suspended, as required by the Act, after the RCMP began a criminal investigation of Mr. Carson's conduct in respect of the same subject-matter. That investigation led to a charge of influence peddling being laid under the *Criminal Code*. As required by the Act, the examination remained suspended until the charge was finally disposed of in this case by the Supreme Court of Canada on March 23, 2018.

As a result of the court proceedings, all of the relevant facts related to Mr. Carson's post-employment activities have been made public, and the matter has been dealt with with finality by the Supreme Court of Canada. Therefore, there is no need to expend further public resources by continuing this examination.

THE REQUEST

On March 12, 2011, the Office of the Conflict of Interest and Ethics Commissioner (Office) received a letter from Mr. Ray Novak, the then Chief of Staff in the Office of the Prime Minister, the Right Honourable Stephen Harper, requesting that an examination be undertaken into the conduct of Mr. Bruce Carson, a former senior advisor in the Prime Minister's Office. Mr. Novak's letter stated that the request for an examination was sent on behalf and at the request of the Prime Minister.

According to that letter, Mr. Carson had attempted to act in such a manner so as to take advantage of his previous position, in contravention of section 33 of the *Conflict of Interest Act*. Since the information was incomplete, the Office requested additional information from the Prime Minister's Office, while noting that, according to media reports, Mr. Harper had also submitted an investigation request to the Royal Canadian Mounted Police (RCMP) dealing with the same subject-matter.

On March 22, 2011, the Office received a new, more specific request from Mr. Dimitri Soudas, the then Director of Communications at the Prime Minister's Office. Mr. Soudas wrote that he had been informed of Mr. Carson's email exchanges with the departmental authorities at Indian and Northern Affairs Canada, as the department was known at the time. According to Mr. Soudas, those emails, along with other documents, appeared to show that Mr. Carson was trying to use his influence to have federal funding approved in order to purchase water filtration systems on indigenous reserves, thereby helping his girlfriend make a lucrative commission on the sale of those devices. Mr. Soudas' letter indicated that Mr. Carson had contacted two ministers about the sale of those water treatment devices.

Section 33 of the Act prohibits former public office holders from acting in such a manner as to take improper advantage of his or her previous public office.

The Office concluded that the request satisfied the requirements set out in subsection 44(2) of the Act, which triggered the examination of the matter raised.

PROCESS AND FACTS

On April 1, 2011, the Office launched an examination under section 44 of the Act. The Office wrote to Mr. Carson in this regard, to inform him that the purpose of the examination was to determine whether he had contravened section 33 of the Act. The Office asked Mr. Carson to provide, in writing, any document in his possession dealing with the matter and his comments.

The Office received an initial response from Mr. Carson on April 18, 2011, and conducted an interview with him on May 3, 2011. Following the interview, Mr. Carson provided additional information and documentation in May and June 2011.

Between April and November 2011, the Office requested and obtained documents from various sources, and conducted eight interviews with other witnesses.

On November 14, 2011, the Office received notice from the RCMP that it was investigating Mr. Carson's conduct under the *Criminal Code*, in respect of the same subject-matter as the present examination.

Pursuant to paragraph 49(1)(b) of the Act, the Office must immediately suspend an examination if it discovers that an investigation has been commenced in respect of the subject-matter of the examination. Section 49 states:

> *49 (1) The Commissioner shall immediately suspend an examination under section 43, 44 or 45 if*
>
> *(a) the Commissioner believes on reasonable grounds that the public office holder or former public office holder has committed an offence under an Act of Parliament in respect of the same subject-matter, in which case the Commissioner shall notify the relevant authorities; or*
>
> *(b) it is discovered that the subject-matter of the examination is also the subject-matter of an investigation to determine whether an offence referred to in paragraph (a) has been committed or that a charge has been laid in respect of that subject-matter.*
>
> *(2) The Commissioner may not continue an examination until any investigation or charge in respect of the same subject-matter has been finally disposed of.*

The Office therefore suspended the examination and, on November 17, 2011, notified Mr. Carson accordingly.

The RCMP investigation, which also addressed the issue of whether Mr. Carson was attempting to use his influence to have federal funding approved to purchase water treatment systems on indigenous reserves, thereby helping his girlfriend receive a lucrative commission on the sale of those devices, led to criminal charges of influence peddling under paragraph 121(1)(d) of the Criminal Code, which states:

> ***121*** *(1) Every one commits an offence who*
>
> [...]
>
> *(d) having or pretending to have influence with the government or with a minister of the government or an official, directly or indirectly demands, accepts or offers or agrees to accept, for themselves or another person, a reward, advantage or benefit of any kind as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with*
>
> *(i) anything mentioned in subparagraph (a)(iii) or (iv), or,*
> *(ii) the appointment of any person, including themselves, to an office;*

The case was heard before the Ontario Superior Court on March 14 and 15, 2015. In a judgment rendered on November 17, 2015, Mr. Carson was acquitted (*R. v. Carson*, 2015 ONSC 7127).

Following Mr. Carson's acquittal, the Crown appealed the Ontario Superior Court decision. The appeal was heard on October 12, 2016 and the Court of Appeal for Ontario rendered its decision on February 17, 2017 (*R. v. Carson*, 2017 ONCA 142), setting aside the acquittal and finding Mr. Carson guilty of influence peddling.

In its judgment, the Court of Appeal for Ontario wrote that, during his trial, Mr. Carson had admitted that he was a person who had influence and that he had demanded a benefit for his girlfriend, who worked for the water treatment systems vendor H2O Professionals Inc., in exchange for exercising his influence on behalf of the company.

Mr. Carson appealed the decision to the Supreme Court of Canada. The case was heard on November 3, 2017. In its decision of March 23, 2018, the Supreme Court of Canada upheld the guilty verdict against Mr. Carson (*R. v. Carson*, 2018 SCC 12).

On April 13, 2018, the Office notified Mr. Carson that it was resuming the examination that it had undertaken on April 1, 2011, and suspended on November 14, 2011.

ANALYSIS AND CONCLUSION

Subsection 44(3) of the *Conflict of Interest Act* (Act) allows the Commissioner, having regard to all of the circumstances of the case, to discontinue an examination that was initiated at the request of a parliamentarian. Subsection 44(3) reads as follows:

> *44 (3) If the Commissioner determines that the request is frivolous or vexatious or is made in bad faith, he or she may decline to examine the matter. Otherwise, he or she shall examine the matter described in the request and, having regard to all the circumstances of the case, may discontinue the examination.*

When the Commissioner determines that an examination is to be discontinued pursuant to subsection 44(3) of the Act, subsection 44(7) of the Act requires that the Commissioner publish a report:

> *44 (7) The Commissioner shall provide the Prime Minister with a report setting out the facts in question as well as the Commissioner's analysis and conclusions in relation to the request. The report shall be provided even if the Commissioner determines that the request was frivolous or vexatious or was made in bad faith or the examination of the matter was discontinued under subsection (3).*

I must therefore determine, having regard to all the circumstances of this case, whether to discontinue the examination into the post-employment conduct of Mr. Carson.

The expression "all the circumstances of the case" has been broadly interpreted and, in the administrative law context, includes public interest considerations, such as whether the matter has already been decided by another body, the finality of that decision and whether it makes sense to expend public resources to proceed with the investigation of what is essentially the same complaint.

This examination was suspended because its subject-matter was also the subject of an investigation which led to the laying of a criminal charge. In accordance with subsection 49(2) of the Act, the matter remained suspended until it was finally disposed of in this case by the Supreme Court of Canada on March 23, 2018.

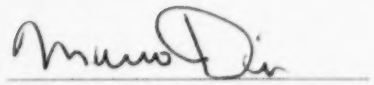
As a result of the court proceedings, which dealt with the same subject matter as that of the examination commenced under the Act, all of the relevant facts related to Mr. Carson's post-employment activities, which initially gave rise to the parliamentarian's request for an examination under the Act more than seven years ago, have been made public. Furthermore, a final determination on the very same subject matter was rendered by the Supreme Court of

Canada in the above-referenced decision, where the Court upheld the guilty verdict of influence peddling against Mr. Carson contrary to paragraph 121(1)(d) of the *Criminal Code*.

I am of the view that, having regard to all of the circumstances of this case, it is in the public interest to discontinue this examination. The very same subject matter as that of this examination has been dealt with with finality by the Supreme Court of Canada. There is therefore no longer a need to further expend public resources in continuing with this examination, especially given the guilty verdict against Mr. Carson.

Conclusion

For these reasons, this examination under the *Conflict of Interest Act* is discontinued pursuant to subsection 44(3) of the Act.



Mario Dion
Conflict of Interest and Ethics Commissioner
June 7, 2018